

REMARKS

The Examiner is requiring restriction to one of the following groups:

Group I: Claims 1-4, drawn to a dyglyceride composition; and

Group II: Claims 5-10, drawn to a package containing oil.

Applicants have elected Group I, claims 1-4, drawn to a dyglyceride composition, with traverse.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the examiner if restriction is not required (M.P.E.P. § 803). The burden of proof is on the Examiner to provide reasons and/or examples, to support any conclusion in regard to patentable distinctness (M.P.E.P. § 803). Applicants respectfully traverse the restriction requirement on the grounds that the Examiner has not carried the burden of providing sufficient reason and/or examples to support any conclusion that the claims of the restricted groups are patentably distinct.

The Examiner has categorized the relationships between Groups I and II as a combination and subcombination. Patentable distinctness may be shown if (A) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (B) that the subcombination has utility by itself or in other combinations (M.P.E.P. § 806.05(c)) (Emphasis added). The Examiner asserts that the claimed combination does not require the particulars of the claimed subcombination, and the subcombination has separate utility in health formulas or in encapsulated tablets.

The Examiner's assertion, however, fails to support the criteria required under § 806.05(c)), since there is no evidence of record that the claimed combination does not have the same utility as the subcombination. Thus, as the Examiner has provided insufficient

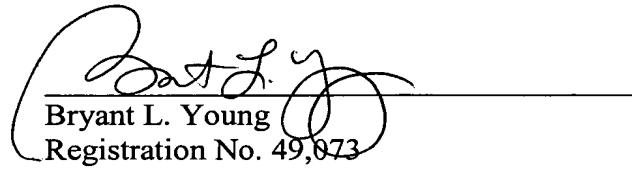
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Reply to Office Action of March 29, 2006

reasons in support of this belief, the Examiner has not met the required burden. Accordingly, the restriction is believed to be improper and should be withdrawn.

In view of the reasons presented above, withdrawal of the requirement is respectfully requested.

Respectfully submitted,

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